(Testimony of William T. Kirschbaum.)

acter or grading or properties of the food products which were to be supplied?

Mr. Faulkner: The same objection; no foundation has been laid and this record does not show to what conversation——

The Court: Objection overruled.

Mr. Faulkner: Exception.

The Witness: I would say that there was a conversation there in regard to quality. Normally, we asked for large Procurement No. 1 grade eggs, if that is what you are referring to.

Mr. Pratt: Q. Procurement Grade 1, did you say? A. Procurement Grade 1.

Q. Do you know what the equivalent is in terms of Consumer grades?

A. That would be comparable to U. S. Grade A.

Q. When you say large eggs, that has a comparable term with Consumer eggs, has it?

A. That is the same in both instances.

Q. That is the same in both instances, large eggs, Large eggs are what, do you know?

A. According to weight and size, usually by weight.

Q. Do you know what that weight is?

A. Not off-hand, no.

Q. Did you have any further conversation that you recall on any of these occasions, touching the quality of the products [1157] to be supplied?

A. On subsequent orders, yes.

Q. Did such conversations relate to this particu-

(Testimony of William T. Kirschbaum.)

lar purchase order or to other and subsequent orders?

A. It will be related in that particular instance to that order because of the fact that there was a price change on one item.

Q. With whom did you have your conversation, if you recall? A. That I don't recall.

Q. Was it with either Mr. Smith or Mr. Goddard?

A. It might have been; it may have been with the bookkeeper.

Mr. Pratt: May these be marked?

The Court: For the purpose of the record, what are you referring to?

Mr. Pratt: I am offering for identification two documents fastened together relating to the purchase of food products by Matson Navigation Company for the Government, from Nye & Nissen, dated May 6, 1944.

Mr. Faulkner: What is that number, please?

The Clerk: 73 for Identification.

(The documents were marked U. S. Exhibit 73 for Identification.)

Mr. Pratt: Q. I show you this document, two papers together, marked Exhibit 73 for Identification, and ask if you can identify those papers, Mr. Kirschbaum. A. I can.

Q. Is that a purchase order issued by you as buyer for Matson Navigation Company?

A. That is correct. [1158]

(Testimony of William T. Kirschbaum.)

Q. I call your attention to the second paper, which is marked "Purchase order addenda C," and I will ask if a copy of that paper was attached to the original purchase order that went to Nye & Nissen. A. That's right, it was.

Q. The paper you have thus identified is a part of the regular records of your company kept in the ordinary regular course of business?

A. It is.

Q. These came from your files?

A. They did.

Q. The original of this purchase order——

A. Would go to the vendor.

Q. Went to Nye & Nissen? A. Correct.

Q. About what date, about the date it bears, May 2, 1944? A. On May 2nd.

Mr. Pratt: I offer this in evidence.

Mr. Faulkner: I will make the same objection I made to the introduction, your Honor, to Exhibits 71 and 72.

The Court: Objestion will be overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 73 for Identification was thereupon received in evidence.)

Mr. Faulkner: Is that considered now one document in evidence?

The Clerk: Yes.

The Court: One document. It was offered as one.

Mr. Pratt: Q. Was this the ordering of food products [1159] to a certain vessel?

A. This is an order for a certain vessel, yes.

(Testimony of William T. Kirschbaum.)

Q. The name of the vessel?

A. SS. Phillipa.

Q. Where was it located?

A. Delivery——

Q. Delivered to what point?

A. To be made at Pier 30, receiving corral. I would like to read it to the jury, if the Court please. This is a purchase order on exactly the same form as the last, which I read to the jury. I won't read the parts except to give the food products that were covered by this purchase order:

"600 lb. butter, domestic, 92 score, 2 lb. squares in 60 lb. Box .4625.

50 lb. cheese, California, Loaf, 5 lb. Loaf .295.

20 lb. cheese, grated, 1 lb. package, .49.

100 lb. Romano Dolce 5 lb. Loaf .36.

65 cases eggs, Fresh, Processed, White U. S., 30 dozen cases, AA, 39 cents a dozen."

Then the word "Confirming" in typewriting in the middle of the document, and the other sheet attached to it again is the Addenda C, with the heading again, "United States of America, War Shipping Administration," giving the fact that the purchase order is issued by Matson Navigation Company as agent for the United States of America, War Shipping Administration, and directing that invoices shall be addressed to the United States, of America, War Shipping Administration, Care of Matson Navigation Company, Agent, with other provisions as the ones I read from Exhibit 72.

(Testimony of William T. Kirschbaum.)

Q. Mr. Kirschbaum, the word "Confirming" in the middle of this purchase order means what?

A. That is the order, or the contract had already been phoned in for the merchandise as shown on the face of the purchase order, and the original of that purchase order was sent out confirming the ordering of that merchandise.

Q. Do you recall whether you had any conversation over the telephone or otherwise with anyone at Nye & Nissen in regard to this particular purchase order?

A. I would say I did.

Q. Are you able to recall what was said in detail in such conversation?

Mr. Faulkner: We make the same objection to these conversations that we made before, your Honor.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: Not in detail, no, but in general, yes.

Mr. Pratt: Q. What, in general, or in substance, was said?

A. In substance, for example, if they had the merchandise available, the size, the quality and the price.

Q. As far as eggs are concerned in this order is there a specification as to the size of the eggs?

A. There is no specification on this purchase order as to the size.

Q. Only as to the quality, is that right?

(Testimony of William T. Kirschbaum.)

A. The quality. [1161]

Q. Fresh, Processed, White, AA.

A. That's right.

Mr. Pratt: I now offer for identification, if the Court please, a form of purchase order issued by Matson Navigation Company to Nye & Nissen dated December 2, 1944, for delivery of food products to the steamship Hawaiian Shipper at Pier 32, San Francisco Harbor; attached to this is the purchase order Addenda C.

(The document was marked U. S. Exhibit 74 for Identification.).

Mr. Pratt: I hand you this document marked Exhibit 74 for Identification and ask if you can identify it, Mr. Kirschbaum. A. I can.

Q. What is it?

A. Purchase order for 400 cases of eggs and addenda attached.

Q. Issued by you? A. That is correct.

Q. Is this paper part of the regular records of the Matson Navigation Company? A. It is.

Q. These two papers? A. They are.

Q. They came from your files, did they not?

A. That is correct.

Q. I observed again the word "Confirming" in the middle of the body of this purchase order. Will you state what that means?

A. It means that the order had been phoned in, the contract had to be regularly confirmed other than verbal conversation.

Q. Are you able to state whether you had the

(Testimony of William T. Kirschbaum.)

conversation which resulted in the issuing of this purchase order? A. I did. [1162]

Q. Do you recall what that conversation was, and with whom?

Mr. Faukner: The same objection, your Honor.

The Court: If he knows he may answer. Overruled.

Mr. Faulkner: Exception.

The Witness: A. Whether or not they had the stocks, the quality, size and the price.

Mr. Pratt: I offer this in evidence, if your Honor please.

Mr. Faulkner: Same objection as made to Exhibits 71 and 72.

The Court: It may be admitted and marked.

(The document was received in evidence and marked U. S. Exhibit 74.)

Mr. Pratt: Q. I observe that this purchase order covers this item of "400 cases of eggs Fresh, Processed, Large, White, Procurement No. 1 or Consumer Grade A to specification of WSA Food Control Regulation No. 14." What is WSA, what does that mean?

A. War Shipping Administration.

Q. And the price of 59½ cents a dozen.

A. That is the agreed price.

Q. That agreed price was arrived at over the telephone? A. That is correct.

Q. By yourself? A. That's right.

Mr. Pratt: I would like to read parts of this to the jury, your Honor. This purchase order, Ex-

(Testimony of William T. Kirschbaum.)

hibit No. 74, relates to a purchase of eggs, 400 cases, for the steamship Hawaiian [1163] Shipper, and the word "13" after the name of the boat indicates what, Mr. Kirschbaum?

A. War Shipping voyage number.

Q. The voyage number. These supplies were for the Hawaiian Shipper on Voyage 13?

A. Outgoing, yes.

Q. What is that? A. Outgoing voyage 13.

Q. Outgoing voyage 13. "To be delivered to specified delivery point December 5, 1944. 1 P.M." And, "Delivery point Pier 32", and the purchase order addenda has the same provision in regard to the fact that it is the United States making the purchase, and that the invoice must be directed to the United States of America War Shipping Administration, care of Matson Navigation Company, Agent. [1164]

Mr. Pratt: I am now offering for identification a purchase order with attached Addenda C.

Mr. Faulkner: If your Honor please, may I call your Honor's attention to the fact that under the rulings of the Court there has been received in evidence an exhibit on all counts of the indictment. The exhibit relates to a transaction in December, 1944.

Mr. Pratt: What is the point, Mr. Faulkner?

Mr. Faulkner: I just state that so the Court will be conscious of the fact that it has gone in on all counts of this indictment. I never heard of a rule of law that conduct subsequent to the commission

(Testimony of William T. Kirschbaum.)

of a claimed offense was admissible to show intent. It is conduct before. I have made my point over and over again, your Honor. I want it clearly understood that when I objected to the first exhibit it applied to this exhibit, and we specifically objected to the introduction of evidence on the substantive counts and your Honor has overruled me. Now they offer an exhibit seven months after those offenses are supposed to have been committed.

The Court: What is the date?

Mr. Faulkner: May, 1944. This date is December 2, 1944. It would not be fair to the Court to let that go in without calling your Honor's attention to it.

Mr. Pratt: You are speaking of May, 1944. To what date do you refer? [1165]

Mr. Faukner: The substantive offenses.

Mr. Pratt: You mean the latest of the substantive offenses? Do you refer to the latest date of the substantive offenses?

Mr. Faulkner: I refer to the date of the series of substantive offenses that is alleged to have been committed in May, 1944, to which you have offered this in evidence showing that something was committed criminally in 1944, May, because of a transaction occurring in December, 1944.

Mr. Pratt: I will amend my offer, if the Court please, so far as the purchase order for the "Hawaiian Shipper" is concerned, which is dated December 2, 1944. I offer it only as to the first count of the indictment.

(Testimony of William T. Kirschbaum.)

The Court: The conspiracy count?

Mr. Pratt: The conspiracy count.

The Court: That offer is limited to the first count. Let the Jury disregard it for any other purpose.

Mr. Faulkner: My objection goes to the first count, too, your Honor.

The Court: Very well.

Mr. Faulkner: Exception.

Mr. Pratt: The paper I am offering for identification is a purchase order of the United States of America, War Shipping Administration, by Matson Navigation Company, the Agent, to Nye and Nissen, dated September 14, 1944, for delivery to the Hawaiian Shipper for its 12th voyage, outgoing.

Mr. Faukner: That is a mis-description of the document. It is a purchase order of the Matson Navigation Company.

Mr. Pratt: Attached to the purchase order.

Mr. Faulkner: Attached to the purchase order, is a document relating to the War Shipping Administration.

Mr. Pratt: And made a part of it.

Mr. Faulkner: It is now after the Clerk put them together.

Mr. Pratt: They were offered together.

Mr. Faulkner: All of those were offered together?

Mr. Pratt: Yes, your Honor, except the first two.

(Testimony of William T. Kirschbaum.)

(The document was thereupon marked U. S. Exhibit No. 75 for Identification.)

Mr. Pratt: Q. Mr. Kirschbaum, I hand you this document marked U. S. Exhibit 75 for Identification and ask you if you identify it?

A. I do.

Q. And I am referring to the two papers together? A. Both papers.

Q. Yes.

A. The purchase order and the Addenda C.

Q. Did these papers come from the regular records of Matson Navigation Company?

A. That is correct.

Q. Kept in the regular course of business?

A. That is right.

Q. This is your office copy, is it not, of a purchase order which was sent to Nye and Nissen confirming a telephone order for the same product, is that right?

Mr. Faulkner: Same objection to this conversation as to [1167] all of the others, your Honor.

The Court: What is the date?

Mr. Faulkner: September——

Mr. Pratt: 1944. I haven't asked him for a conversation yet.

The Witness: It would be confirming, yes, sent out to Nye and Nissen.

Mr. Faulkner: Exception. The Court overruled my objection.

The Court: Read the question and answer.

(Record read.)

(Testimony of William T. Kirschbaum.)

The Court: The question and answer stands. This is September, 1944. The date in the sixth count, is it, or the seventh, is the first day of May, 1944.

Mr. Pratt: That is the latest date.

The Court: What is the date on this?

Mr. Pratt: But I am offering this, when I offer it, as to the first count only. The date of this is September 14, 1944.

Mr. Faulkner: How about the conversation? You let your conversations go in on all counts.

Mr. Pratt: I am restricting these episodes to the first count of the indictment, if the Court please.

Mr. Faulkner: All right, then the same objection will be made on the admission of the Exhibits 71 and 72.

The Court: Very well.

Mr. Pratt: However, the previous purchase order which [1168] related to the delivery of products to the Cape Breton was offered as to all counts, that particular purchase order having to do with one of the overt acts specifically described in the indictment.

Mr. Faulkner: We ought to have those dates clearly in mind.

The Court: The latest date is the third day of May, 1944.

Mr. Faulkner: The third day?

The Court: In Count 6 of the indictment the time charged there is the third day of May, 1944, is that correct, and then there is in the 7th count

(Testimony of William T. Kirschbaum.)

the 29th day of September, 1942. What did you have in mind, Counsel?

Mr. Faulkner: I had in mind, for instance, the count that occurred on the 29th of April. We have evidence introduced of events occurring after that to show its commission. Every transaction that has thus far gone in and been received under Mr. Pratt's offer, with the single exception of the September transaction, has been received by the Court as evidence of an offense alleged to have been committed with the Agwilines on April 29, 1944, so every transaction is subsequent to that. My record shows that on May 1, 1944, a transaction is alleged to have occurred with the Alaska Transportation Company. All these transactions are subsequent to May 1, 1944. My record shows the De La Rama Steamship Company transaction—and this is merely a resume and your Honor has the indictment—we have it May 1, and this is in September. [1169]

The Court: The 6th count?

Mr. Faulkner: The 7th.

The Court: The 7th is the 21st day of March, 1944.

Mr. Faulkner: The 21st of March?

Mr. Hippeli: That is not correct, your Honor. If you will look on Page 19, Line 17.

The Court: I am reading from Page 19.

Mr. Hippeli: Line 17?

The Court: Yes.

Mr. Faulkner: The first day of May.

(Testimony of William T. Kirschbaum.)

The Court: Page 19. It is charged under the 7th count—here it is.

Mr. Pratt: Line 17, the next line, your Honor.

Mr. Faulkner: It is May 1, 1944, your Honor.

The Court: Yes.

Mr. Faulkner: So every transaction thus far testified to would be inadmissible on every count in the indictment on any theory except the 3rd, 4th and 5th.

Mr. Pratt: If the Court please, I am sorry to disagree with Mr. Faulkner on the question of law.

The Court: I think I will give the Jury a recess for a few minutes to give you an opportunity to present the matter.

(Thereupon the Jury left the courtroom, and in their absence Counsel for the respective parties and the Court discussed the matter in question.) [1170]

(An adjournment was taken until tomorrow, Wednesday, February 6, 1946, at 10:00 a.m.)

Wednesday, February 6, 1946, 10:30 o'Clock, a.m.

The Court: Call the roll of the jurors.

(The roll was called, all jurors being present.)

The Clerk: All present, your Honor.

WILLIAM T. KIRSCHBAUM,

recalled.

Direct Examination (Resumed.)

The Court: You may proceed.

Mr. Pratt: If the Court please, at this time the

(Testimony of William T. Kirschbaum.)

Government withdraws its offer of the exhibits 71, 72, 73 and 74 as to the counts Nos. 2 to 7, inclusive, and asks the court to restrict those exhibits, and also all the testimony of Mr. Kirschbaum, to restrict all of that to the first count of the indictment.

Mr. Faulkner: It is understood the objection that we likewise made to the reception of the exhibits and the testimony to the conspiracy count in the record still exists and is maintained, and it is deemed the court overruled them, and we note an exception.

The Court: Let the jury disregard the testimony of the witness on the stand to the substantive counts; the testimony is limited to the conspiracy count, the first count of the indictment. Does that cover it?

Mr. Pratt: I think so, your Honor. [1171]

Q. I had directed the attention of the witness to the papers marked Exhibit 75 for Identification. This exhibit, Mr. Kirschbaum, is likewise a purchase order that was issued out of your office; is that true? A. That is correct.

Q. Is this paper a part of the regular records of your office, kept in the regular and ordinary course of business? A. It is.

Q. This relates, does it not, to an order given first over the telephone and then confirmed by this document for the delivery of certain food products to the steamship Hawaiian Shipper for its twelfth voyage? A. That is correct.

(Testimony of William T. Kirschbaum.)

Q. And the purchase order bears date September 14, 1944? A. That is right.

Mr. Pratt: This exhibit has not yet been offered in evidence. I offer it in evidence as to the first count of the indictment.

Mr. Faulkner: We object to it as incompetent, irrelevant, and immaterial.

The Court: Objection overruled.

Mr. Faulkner: And on all the grounds that were indicated in the argument during the recess.

The Court: The objection will be overruled. Admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit 75 for Identification was received in evidence.) [1172]

Mr. Pratt: I now offer for identification a so-called delivery receipt dated May 10, 1944, directed to U.S.A., W.S.A., care of Matson Navigation Company.

The Court: Let it be admitted for the purpose of identification.

(The document was marked U. S. Exhibit 76 for Identification.)

Mr. Pratt: I also offer for identification a similar delivery receipt on the form of Nye & Nissen; as was the former exhibit, No. 76 for identification, this one being dated May 3, 1944, and relating to a delivery to the Steamship Phillipa.

The Court: It may be admitted for the purpose of identification.

(Testimony of William T. Kirschbaum.)

(The document was marked U. S. Exhibit 77 for Identification.)

Mr. Pratt: I now offer for identification a similar delivery receipt dated September 15, 1944, with the heading of Nye & Nissen, and directed to U.S.A., W.S.A., care of Matson Navigation Company, and which relates to a delivery to the steamship Hawaiian Shipper.

The Court: It will be admitted and marked for the purpose of identification.

(The document was marked U. S. Exhibit 78 for Identification.)

Mr. Pratt: I also offer for identification, also on the letterhead, or the invoice head, a delivery receipt addressed [1173] to U.S.A., W.S.A., care of Matson Navigation, dated December 5, 1944, relating to a delivery to the steamship Hawaiian Shipper.

The Court: Admitted and marked for the purpose of identification.

(The document was marked U. S. Exhibit 79 for Identification.)

Mr. Pratt: Q. I direct your attention, Mr. Kirschbaum, to this Exhibit for Identification No. 76, and I will ask you to examine it and state whether that comes from the regular records of Matson Navigation Company? A. It does.

Q. Are you able to state how that came to the files or records of your company?

A. Well, I would say that the receiving clerk

(Testimony of William T. Kirschbaum.)

receiving the merchandise initialled it and attached it to a copy of the purchase order and sent it over to our office in the building for payment along with the invoice.

Q. This came to you with the invoice, did it?

A. It came to the clerk who passes the invoices.

Q. That was your office, was it?

A. That is correct.

Q. Does that represent the delivery of the products to this steamship Cape Breton at the date named?

Mr. Faulkner: We object to that. That is not the best evidence, whether that paper represents the delivery of the products. That is a shipping tag, that is all it is.

Mr. Pratt: It is a delivery slip. [1174]

Mr. Faulkner: A tag, that is all it is.

Mr. Pratt: Very well.

Q. I direct your attention similarly to Exhibit 77 for Identification and I will ask you if that came from the records of your company?

A. It did.

Q. Did that likewise come with the invoice from Nye & Nissen? A. It did.

Q. Similarly, I call your attention to the next exhibit, which is 78 for Identification, and ask if that also came accompanied by the invoice of Nye and Nissen? A. It did.

Q. I ask you the same as to Exhibit 79 for Identification? A. This also came.

(Testimony of William T. Kirschbaum.)

Q. These are all part of the regular records of your office, is that right? A. They are.

Mr. Pratt: At this time I offer in evidence as to the first count of the indictment these exhibits, 76, 77, 78 and 79.

Mr. Faulkner: The same objection as was more fully heretofore made, incompetent, irrelevant, immaterial, and not within the issues of this case, hearsay as to the defendants and not binding on them.

The Court: Objection overruled. Let them be admitted and marked.

Mr. Faulkner: Exception.

(Exhibits 76, 77, 78 and 79, for Identification, were [1175] thereupon received in evidence.)

Mr. Faulkner: They are offered to count 1.

Mr. Pratt: I would like to have Exhibit 31, please; Exhibit 31 for Identification.

Mr. Faulkner: May I see it? It won't be here.

Mr. Pratt: It wouldn't be in this file. Let's have Exhibit 74 back again.

(The exhibits requested were handed to counsel by the clerk.)

Mr. Pratt: Q. Mr. Kirschbaum, I direct your attention to Exhibit No. 74, which you identified, and which is a carbon copy, is it not, a duplicate original of the purchase order that you sent to Nye & Nissen; is that right?

A. That is correct.

(Testimony of William T. Kirschbaum.)

Q. I now direct your attention to Exhibit 31 for Identification, and I will ask you if that is the original of the Exhibit 74? A. It is.

Mr. Pratt: If the Court please, Exhibit 31 was produced by the defendant corporation in response to a subpoena as being the original purchase order of which Exhibit 74 is the duplicate original retained by the office of the Matson Navigation Company. I now offer Exhibit 31 for Identification in evidence.

Mr. Faulkner: Same objection as made to receipt of Exhibit 74, your Honor. [1176]

The Court: Is it limited to the first count?

Mr. Pratt: It is offered as to the first count.

The Court: Let it be admitted and marked. Objection overruled.

Mr. Faulkner: Exception.

(The document heretofore marked U. S. Exhibit 31 for Identification was thereupon admitted in evidence.)

Mr. Pratt: That is all with this wtiness, if your Honor please.

Cross Examination

Mr. Faulkner: Q. Mr. Kirschbaum, as I understood your testimony, you have been with the Matson Navigation Company since 1939?

A. I have been buyer since 1939.

Q. Prior to that were you in some other position? A. That is correct.

(Testimony of William T. Kirschbaum.)

Q. So you have been with them over a long period of time? A. About 14 years.

Q. Since 1939, at all events, you have had occasion to deal with the firm of Nye & Nissen?

A. Correct.

Q. In the purchase of butter, eggs, and cheese?

A. That's right.

Q. You were requested to bring certain records here in court by certain Government agents?

A. That is right.

Q. In the year 1944, that was a very active year in supplying ships, was it not, Mr. Kirschbaum?

A. It was. [1177]

Q. The Matson Navigation Company, I think you testified, had something like 100 ships to be victualed and supplied with materials, am I correct in that? A. That is correct.

Q. The particular transactions that you identified purchase orders for do not purport to be all of the purchase orders that were issued to Nye & Nissen during all of that time, do they?

A. They do not.

Q. Your company, the Matson Navigation Company, had dealt with the firm of Nye & Nissen over a long period of time, had they not?

A. They had.

Q. That firm was large suppliers of butter, eggs and cheese to Matson Navigation Company?

A. That's right.

Q. In the particular year of 1944 the war in the Pacific was in full sway, that is correct, is it not?

(Testimony of William T. Kirschbaum.)

A. That is correct.

Q. In your department, Mr. Kirschbaum, did you run that department alone, or did you have assistants, girls who worked under you and under your direction?

A. No. There would be the purchasing agent for whom we worked, under his direction, buyers worked under his direction.

Q. How many would be in your buying department?

A. About nine.

Q. You are the only one who would phone Nye & Nissen in relation to the availability of supplies in your department?

A. No. There probably would be two of us.

Q. Is it not a fact that at or about this time there was a common practice, a general practice to phone the firm of Nye & Nissen and find out if they had certain type merchandise, and to find out perhaps the price, is that right?

A. That is correct.

Q. After you found out they had it, it was your general practice, was it not, to say, "We want some right now"?

A. If it was the proper grade, yes.

Q. Yes, that's what I mean. Speed in executing those orders was a definite characteristic of your relationship with Nye & Nissen when certain type ships came in there and had to be supplied right away, is that correct?

A. Not necessarily, no; not in all cases.

Q. I don't mean in all cases. I mean there

(Testimony of William T. Kirschbaum.)

were—it was a very common occurrence for a girl or somebody in your department, to phone Nye & Nissen about eight o'clock in the morning and say, "We want these delivered on the pier before 12 o'clock?" A. That was very rare.

Q. Well, did it occur?

A. It probably did.

Q. Let me call your attention to the very first order, May 10, 1944, a quantity of 400 pounds of butter, 80 pounds of cheese, 20 pounds of another kind of cheese, 60 pounds of another, and 45 cases of eggs. That was a purchase order issued on May 10, was it not?

A. That is the day it was written up, on May 10.

Q. The day that the order was phoned in?

A. Not necessarily, no.

Q. How long before could it have been phoned in? A. Could have been one or two days.

Q. It could have been one or two days?

A. Correct.

Q. Could it have been a week?

A. No, I don't think so.

Q. You will notice, however, that the date of that particular purchase order, Mr. Kirschbaum, is dated May 10th and the time of delivery is 1:00 p.m., May 10th? A. That is correct.

Q. So as far as your paper record is concerned it would indicate that particular purchase order was issued on May 10th and that time of delivery of the articles required was specified particularly at

(Testimony of William T. Kirschbaum.)

one o'clock p.m. on the day of the date of the purchase order. That is correct, is it not?

A. The order was typed that day, yes.

Q. All right. You testified to the effect that the practice was to telephone to Nye & Nissen, place the order, and then if your business was run the way you wanted it usually you would send the purchase order?

A. If the volume of business permitted the girls to type them up, yes.

Q. Occasion might arise, however, where a telephone order would be made to Nye & Nissen and the goods would actually be delivered onto the pier before you ever issued a purchase order?

A. That is correct.

Q. Do you remember distinctly any of these particular transactions? [1180]

A. Distinctly, no.

Q. In other words, when you testified that you would have conversations, you were assuming that you may have had a conversation because it was your practice to have a conversation; am I correct in that?

A. We would never place an order unless we had a conversation with them at any time.

Q. Well, somebody else in your department might have had the conversation, is that correct?

A. Not on those orders, no.

Q. Why do you say that?

A. Because we all initial a requisition from which the orders are typed, and they are identified,

(Testimony of William T. Kirschbaum.)

the girls identify that requisition as being placed, the order as being placed by a particular buyer, and they insert the name upon the right hand corner.

Q. Is that where your name appears?

A. Yes.

Q. Is that indicative that you handled the order at some stage?

A. I handled the complete order, correct.

Q. Then the order of May 10, 1945, Exhibit 71, you ordered the merchandise described therein?

A. Yes.

Q. You, of course, knew nothing that happened to that order until you received as part of your files a tag, a delivery tag; isn't that correct?

A. I don't see that tag when it is delivered.

Q. In other words, it ultimately comes or gets into your files? A. Gets in the office files.

Q. In your department?

A. No, in the outside department. [1181]

Q. This is from a file kept by your department in the regular course of its business?

A. It is kept in the firm's files.

Q. I understood you to testify on your direct examination that this shipping tag I am now referring to, Exhibit 76, is accompanied by an invoice.

A. Usually, yes.

Q. Have you got the invoice?

A. No, I have not.

Q. Did you bring it out here?

A. I think Mr. Pratt has it.

Mr. Pratt: We have it. Do you want it?

(Testimony of William T. Kirschbaum.)

Mr. Faulkner: I want it as long as you have it.

Mr. Hippeli: I believe the next witness was going to produce it, Mr. Faulkner.

Mr. Faulkner: All right.

Q. In other words, ultimately that delivery tag is another instrument that is part of the shipment that starts with the telephone conversation?

A. Yes.

Q. These records are merely paper records built up showing a purchase; that is correct?

A. That's right.

Q. Do you know what happened to the merchandise covered by purchase order on May 10, 1944?

A. What happened to it?

Q. Yes. Did it go out on the ship Cape Breton?

A. I would say that it did.

Q. Did you ever phone to the firm of Nye & Nissen and make any complaint about any item of merchandise on that purchase order?

A. Probably about the delivery.

Q. About time of delivery?

A. That is about all. [1182]

Q. I mean this, that the quality of merchandise reflected in purchase order No. 71 was never the subject matter of any complaint by you to the firm of Nye & Nissen?

A. The complaint wouldn't come to me.

Q. I know, but you, at all events, did not make any complaint to the firm of Nye & Nissen?

A. No, I did not.

Q. As far as you know, that merchandise went

(Testimony of William T. Kirschbaum.)

out on the Cape Breton, the ship for which it was ordered? A. That's right.

Q. On the next item, Exhibit 73, again I see your name. That relates to the SS Phillipa on its 27th voyage. It was to receive merchandise, 600 pounds of butter, 50 pounds of cheese, 20 pounds of cheese, a hundred pounds of another kind of cheese, I won't attempt to pronounce it, Romano Dulce, I think it is, and 65 cases of eggs. The fact your name appears on that is indicative to you, is it, Mr. Kirschbaum, that you at some time handled, had something to do with this order?

A. That's right.

Q. Now, I call your attention to the fact, Mr. Kirschbaum, that on this order, Exhibit 73, you have here, "Passed for voucher 29th day of May," and "$3.00 Inspection"—certificate is that, inspection something. What is that writing?

A. That is, "Inspection fee."

Q. Inspection fee. That is an inspection fee to the Department of Agriculture, is it not?

A. I believe it is, yes.

Q. That inspection fee is a service that was performed by the Department of Agriculture, is it not, for which you paid [1183] a fee?

A. For the War Shipping Administration.

Q. Well, I mean that you handled it at the time?

A. That's right.

Q. In other words, the Department of Agriculture performed some service in relation to this shipment for you and you paid them a fee for it?

(Testimony of William T. Kirschbaum.)

A. That's right.

Q. That is correct. You don't know the nature of that service? A. Yes, I think I do.

Q. What was the nature of the service that was performed?

A. I think that the vendor, in this particular case Nye & Nissen, called the Department of Agriculture to come down and inspect this shipment of eggs, in accordance with the regulations laid down by the War Shipping Administration. [1184]

Q. I was referring to Exhibit No. 73 when I showed you the words "Inspection Fee." I call your attention, Mr. Kirschbaum, particularly to Exhibit No. 71. It says here very clearly, does it not, "We required Government inspection at point of delivery"? Do you note that?

A. That is right.

Q. That means, does it not, that the materials covered by this order are brought by the vendor down on the dock, and are there received by the Matson Navigation Company and are inspected by the Government agencies on the dock, does it not?

A. It says so on the order, but that is not correct.

Q. Isn't that what that language means?

A. That point of delivery would be at the Nye & Nissen plant.

Q. The delivery is at the dock, is it not?

A. It should be, yes.

Q. In other words, the point of delivery of all merchandise is at the time the clerk of the Matson

(Testimony of William T. Kirschbaum.)

Navigation Company receipts for it at the dock, is it not? A. That's right.

Q. In other words, Matson does not take delivery of any merchandise from the firm of Nye & Nissen at their plant? A. No.

Q. So that the inspection in this particular instance, so far as this shipment was concerned, was a dock inspection, was it not?

A. According to the records, yes.

Q. Have you ever read one of these papers on the back? A. I have.

Q. Do you know the terms? A. Vaguely.

Q. It would be a lot easier if you read something that you are familiar with than if I read. Do you mind reading the provision of your purchase order under "Inspection," which was not read by Mr. Pratt, your Honor?

A. "Number 4. Inspection: All merchandise described herein is subject to the inspection of purchaser upon arrival at destination, even though payment may have been made for the same prior to such arrival. If upon such inspection, which shall be made within a reasonable time after delivery of the merchandise, the same proves not to conform to the requirements of this order, the purchaser shall be entitled to reject the defective merchandise and return the same to the vendor, whereupon the vendor shall refund the purchaser any part of the purchase price theretofore paid for said defective merchandise, together with all charges incurred by purchaser for transportation, handling and storage."

(Testimony of William T. Kirschbaum.)

Q. Either under the provisions of that purchase order or in any other manner were any of the articles described in any of the purchase orders, Exhibits 71 to 75, inclusive, ever returned to the firm of Nye & Nissen?

A. I would say they had not been returned?

Q. Were the deliveries ever rejected by the Matson Navigation Company, whether they were returned to anyone else or not?

A. Well, from the records I would say they had not been. [1186]

Q. Mr. Kirschbaum, do you recall as a buyer for Matson about the time that the War Shipping Administration or the War Food Administration put into effect a requirement that articles of food going on War Shipping vessels were required to be inspected? A. That is right.

Q. Do you remember that? That was in the early part of 1944, was it not?

A. That is right.

Q. Prior to that order, is it not true that the commodities, such as butter, eggs and cheese, were not always required to be inspected by the Matson Navigation Company when you were making purchases from the firm of Nye & Nissen?

A. I believe there were other regulations prior to 1944. I don't recall them offhand.

Q. Certainly they are not in evidence here. I do not think there were any. In any event, we will get at it this way, Mr. Kirschbaum; a regulation clear in your mind came in existence in the fore

(Testimony of William T. Kirschbaum.)

part of 1944 requiring War Shipping commodities, such as butter, eggs and cheese, to be inspected?

A. I believe it came out in 1942.

Q. Requiring all shipments to be inspected?

A. That is right.

Q. Are you certain of that, Mr. Kirschbaum?

A. I am pretty certain of it.

Q. At all events, the one in evidence here required inspection in February, I think, of 1944. Is it not a fact that when Matson Navigation Company were buying articles similar to [1187] butter, eggs and cheese for certain type ships for a long period of time they required inspection and for other type ships they did not?

A. During 1944?

Q. No, no, before that, prior to 1944?

A. I believe that is correct.

Q. Now, in respect to this order here, U. S. Exhibit No. 74, I noticed again that the Matson Navigation paid a $6.00 inspection fee?

A. That is correct.

Q. That payment was made directly to the Department of Agriculture?

A. The Department of Agriculture.

Q. "When those fees are paid as indicated on there does not the Matson Navigation Company get a certificate from the Department of Agriculture? A. They do.

Q. Do you keep those certificates?

A. They are attached to the pink copy, our file copy.

(Testimony of William T. Kirschbaum.)

Q. Who asked you to remove the Department of Agriculture certificates of inspection from these purchase orders?

A. Did you say who asked me?

Q. Did anyone ask you to remove the Department of Agriculture certificates from these purchase orders?

A. They were not removed when I gave them to Mr. Pratt.

Q. In other words, when you produced these papers for Mr. Pratt you had a pink purchase order and you had a white paper and you had accompanying these various purchase orders Department of Agriculture certificates of inspection?

A. That is right. [1188]

Q. And Mr. Pratt still has them?

A. I believe he has.

Mr. Faulkner: That is all.

Redirect Examination

Mr. Pratt: Q. Mr. Kirschbaum, do you know where, in fact, inspections were made of eggs, butter and cheese that were purchased from Nye & Nissen?

A. They were supposed to have been made at the plant of Nye & Nissen.

Q. So far as you know is that where they were made? A. That is correct.

Q. Now, so far as the payments to the Department of Agriculture for inspection by their inspectors, I think you said that those charges were paid by whom?

(Testimony of William T. Kirschbaum.)

A. By Matson Navigation Company out of War Shipping funds.

Q. Out of Government funds?

A. That is right.

Mr. Pratt: In response to a question asked by Mr. Faulkner in regard to inspection certificates, I will say that the Government has those inspection certificates and will produce them to Mr. Faulkner if he wants them.

Mr. Faulkner: Is that all?

Mr. Pratt: I think that is all.

Mr. Faulkner: Just one question.

Recross Examination

Mr. Faulkner: Q. Mr. Kirschbaum, when you testified just a moment ago about the inspection of products, you have never been present at an inspection of any of these products in the plant [1189] of Nye and Nissen, have you? A. Never.

Q. When were you ever present at any inspection on the wharf? A. Never.

Q. Your testimony is what you think was done, isn't that correct? A. That is correct.

Q. It is not your own knowledge on the subject?

A. It is what the regulations call for.

Q. Your purchase order calls for inspection at the point of delivery, does it not?

A. On one purchase order, yes.

Q. And the same language is on each of those purchase orders. That language with respect to inspection is on each one of those purchase orders, is it not?

(Testimony of William T. Kirschbaum.)

A. It does not conflict with what appears on the face of the purchase order.

Q. I mean this part of "Inspection" that you read? A. Yes.

Q. You read from one counterpart of these exhibits. That same language——

A. Appears on all of them.

Q. Appears on all of them, and under the terms of your purchase order, inspection legally is at the point of delivery?

A. If it does not conflict with what appears on the face.

Mr. Faulkner: Thank you.

The Court: The jurors may be excused for a few minutes. Is that all from this witness on the stand?

Mr. Faulkner: Yes, we are through.

(Recess.)

The Court: Waive the roll call; stipulated the jurors are [1190] all present.

JAMES G. LEE,

called on behalf of the plaintiffs; sworn.

The Clerk: Q. Will you state your name?

A. James G. Lee.

Direct Examination

Mr. Pratt: Q. Your name is James G. Lee?

A. Yes sir.

(Testimony of James G. Lee.)

Q. Mr. Lee, where do you reside?

A. San Mateo.

Q. Your employment is what?

A. Disbursing cashier, Matson Navigation Company.

Q. How long have you been employed by the Matson Navigation Company?

A. In that capacity or——

Q. In that capacity?

A. Approximately ten years.

Q. And in that capacity as disbursement cashier do you have among your functions the payment to vendors for deliveries of products to the waterfront? A. Yes sir.

Q. And in that connection I direct your attention to a paper that is now marked Exhibit 80 for Identification. Do you recognize this document?

A. Yes sir.

Q. This passed through your hands, did it, in the course of business of your company?

A. Yes sir.

Q. And in that connection were you acting for the War Shipping Administration?

A. Yes sir.

Q. Now, in what connection did this exhibit pass through your [1191] hands, come to your attention?

A. For payment.

Mr. Pratt: This is offered in evidence, if the Court please, being an invoice of Nye and Nissen on their regular form, directed to U.S.A., W.S.A., Matson Navigation Company, General Agents, and

(Testimony of James G. Lee.)

describing certain products, with the amount of the bill being $778.01. The ship referred to on the invoice is the steamship Cape Breton, Pier 30. Inspected by W.F.A.

Mr. Faulkner: May I see it before your Honor passes on it?

Mr. Pratt: This is offered in evidence in connection with the first count of the indictment.

Mr. Faulkner: I am trying to figure which part of this, your Honor, is the form received from Nye and Nissen and which has been attached to it later by Matson.

Mr. Pratt: Before asking the Court for a ruling on this offer, I now offer for identification a counterpart or a duplicate original or a carbon copy of the Exhibit 80 for Identification. May it be marked 81 for identification?

The Court: It may be admitted and marked.

(The documents were thereupon marked U.S. Exhibits 80 and 81 for Identification, respectively.)

Mr. Pratt: Q. I will ask you, Mr. Lee, to examine this paper in connection with the other one and state whether they both came into your hands as an official of the Matson Navigation Company and thus of the War Shipping Administration?

A. Yes sir.

Q. When invoices come from Nye and Nissen how many copies are required? How many come into your possession?

A. Two.

Q. Just two?

(Testimony of James G. Lee.)

A. Yes, the original and a copy.

Q. Do you know whether other copies also come to your company that do not actually come into your hands?

A. Well, I understand that six copies are required, that is, an original and five copies.

Q. And of those six copies the original and one copy come to you, is that right? A. Correct.

Mr. Pratt: Now we offer in evidence as applicable to the first count of the indictment Exhibits 80 and 81.

Mr. Faulkner: I think, your Honor, that the Exhibit 80 would not be admissible under any circumstances, having in mind that they have a counterpart. In other words, it would be very difficult to take Exhibit 80 and make a clear record of what is Matson's records, which would not bind Nye and Nissen, and here we have the counterpart, and if the offer is limited to the counterpart we merely make the general objection that we have heretofore made and which your Honor has passed upon and take exception to that ruling.

Mr. Pratt: If the Court please, the first of these, Exhibit 80, we believe is admissible in that because of marks on it put there in the regular course of business by this witness, by the company in connection with the payment of the [1193] invoice, particular to identify the number of the check which paid Nye and Nissen for this invoice.

The Court: Do you offer both of them?

Mr. Pratt: I offer both of them.

(Testimony of James G. Lee.)

The Court: As one exhibit?

Mr. Pratt: No, one is 80 and the other is 81.

Mr. Faulkner: All of the markings of the firm of Matson would be hearsay as to the defendants. In other words, having in mind the purpose of the statute with respect to presenting a false claim, the claim in this form is not the manner in which it was presented. It is the claim in the form that it was presented, and after that we make the general objection. As to this, it is here for identification.

We told counsel for the Government, in respect to all checks that purported to have been issued to Nye and Nissen, if they would show us the check, we would stipulate as a fact that they represented a check issued in payment of a particular invoice. We told them that at the outset of the trial.

The Court: I suggest that you hand both of these documents to the witness and let him inform the Jury what they are.

Mr. Pratt: At the same time, if the Court please, I will hand the witness another exhibit, which is a check. I am offering, to be marked for identification, a cancelled check of Matson Navigation Company dated June 6, 1944, "Pay to the order of Nye and Nissen, Inc," for $5,224.62. [1194]

The Court: It may be admitted and marked for purposes of identification.

Mr. Faulkner: Will your Honor indulge me a moment? I want to talk to one of the defendants and I think we can shorten this type of testimony.

The Court: Very well.

(Testimony of James G. Lee.)

Mr. Pratt: I also offer for identification a paper marked——

Mr. Faulkner: Excuse me, Mr. Pratt. May I address the Court? We will stipulate with counsel for the Government, subject to our objection to materiality, that in respect to these various checks, not only from Matson but anyone else, and an invoice indicative that it is an invoice of Nye and Nissen, that any check that you offer upon the assumption that it paid that invoice we will stipulate that it does, subject to correction by either side. In other words, you do not have to trace every invoice that goes to make up a $5,000 check to show that a $700.00 invoice was paid out of it. You present the check and we will agree that the invoice that you say it pays was paid.

Mr. Pratt: Very well.

Mr. Faulkner: If you have satisfied yourself, for instance, to set a pattern for these others, with respect to this check here for $5,224.62, it is indicated by you that this invoice for $778.01, which is U. S. Exhibit No. 81, was paid by that check, we will stipulate that that is a fact. [1195]

Mr. Pratt: Very well.

Mr. Faulkner: Subject, of course, to the fact that we urge that these facts are not admissible in evidence on the grounds indicated. These are all on the first count.

Mr. Pratt: That is right. Therefore I understand that it is admitted that the invoices, the exhibits of which are in duplicate here, one 80 for Identification and the other 81 for Identification,

(Testimony of James G. Lee.)

which are billed to the United States War Shipping Administration for $778.01 were paid to Nye and Nissen by means of the check No. 82 for Identification, which check is in the sum of $5,224.62, and the amount of the invoice is $778.00. Therefore it is admitted that this check in this amount includes the payment of this particular invoice.

Mr. Faulkner: That is right.

The Court: Let them be admitted and marked.

Mr. Faulkner: That will eliminate, your Honor, the necessity of Exhibit 80 being marked other than for identification because that is in part the Nye and Nissen invoice and part the records of Matson.

The Court: Very well.

Mr. Faulkner: Is that agreeable?

Mr. Pratt: Yes, and therefore we will withdraw the offer of Exhibit 80 for Identification and now we offer 81 and 82.

Mr. Faulkner: We make the general objection heretofore made. [1196]

The Court: The objection will be overruled.

(The documents in question were thereupon received in evidence and marked U. S. Exhibits 81 and 82 respectively.)

Mr. Faulkner: Exception, your Honor.

Mr. Pratt: Q. Mr. Lee, with what funds was this invoice paid?

A. Paid by Matson Navigation Company funds.

Q. Do you know whether the Matson Navigation Company was reimbursed for this payment by the Government? A. Yes.

(Testimony of James G. Lee.)

Mr. Faulkner: We object to that on the ground it is incompetent, irrelevant, and immaterial.

The Court: If he knows he may answer.

Mr. Faulkner: Exception.

A. It was reimbursed us by the American Export Lines, who was the agents for that vessel.

Mr. Pratt: Q. And Matson was the sub-agent under American Export Lines, is that right?

A. Yes sir.

Q. Do you know whether the reimbursement to you by American Export Lines was with Government funds?

Mr. Faulkner: We object to that as calling for an opinion and conclusion and hearsay.

Mr. Pratt: If he knows.

The Court: Read the question.

(Question read.)

The Court: Q. Do you know that of your own knowledge? A. No, I do not. [1197]

Mr. Pratt: In this connection, if the Court please, we ask that the witness be permitted to testify, even if it is his understanding without it being his definite knowledge, and in that connection we refer your Honor to a ruling by Judge Goodman of this court in exactly a similar situation in which he permitted the witness to testify that all bills in this particular instance, in that case, that all bills which were paid by the witness were with funds of the War Shipping Administration. That was in the trial of the case of United States vs. Rodriguez et al, tried in March, 1945, before Judge Goodman.

(Testimony of James G. Lee.)

The Court: You may call any witness who can testify of his own knowledge to that fact. There is no objection to that. But the witness says here on the stand he does not know.

Mr. Pratt: Very well.

Q. I now direct your attention to another exhibit.

Mr. Faulkner: Mr. Pratt, we will stipulate anything that you have purporting to be an invoice of Nye and Nissen is an invoice of Nye and Nissen, and that any check that you will indicate or you do believe was issued in payment of it was issued in payment of it. We haven't copies. We don't keep copies. Have you the carbon copies?

Mr. Pratt: Q. I direct your attention to these two exhibits, which are marked for Identification Exhibits 83 and 84.

I ask that these be marked, if the Court please, 83 being a Nye and Nissen invoice directed to United States War Shipping [1198] Administration, care of Matson Navigation Company, General Agents, dated May 3, 1944, in the sum of $1,100.32.

(The document was thereupon marked U. S. Exhibit 83 for Identification.)

Mr. Pratt: And as the next number, which is 84 for Identification, a duplicate original of the same invoice.

(The document was thereupon marked U. S. Exhibit 84 for Identification.)

Mr. Pratt: I also offer for identification a check in the sum of $12,196.84 payable to Nye and Nissen,

(Testimony of James G. Lee.)

dated June 2, 1944, drawn by Matson Navigation Company, Special Account, as Exhibit 85 for Identification.

(The document was thereupon marked U. S. Exhibit 85 for Identification.)

Mr. Pratt: Q. Directing your attention to these three exhibits, Mr. Lee, I will ask you if these are papers that have passed through your hands?

A. Yes sir.

Q. And come from the records of your corporation, is that right? A. Yes sir.

Q. And are these matters relating to War Shipping Administration? A. Yes, sir.

Q. Now, I direct your attention particularly to this check, Exhibit 85 for Identification. Can you tell from what funds that check was drawn, upon what funds?

A. War Shipping Administration funds. [1199]

Q. That represents a disbursement of Government funds, does it? A. Yes sir.

Q. In what respect does that vary from the other check, Exhibit 82?

A. Exhibit 82 is a check of the Matson Navigation Company.

Q. And they are general corporate funds?

A. Yes sir.

Q. And this second check, Exhibit 85——

A. Is from War Shipping Administration.

Q. How do you tell that from the check?

A. It has Agent—"General Agent, Special Account".

(Testimony of James G. Lee.)

Q. Does that represent funds which the Government had deposited with your company as general agent? A. Yes sir.

Q. So far as this particular boat is concerned, the steamship Phillipa, do you know the manner in which your company operated that boat?

A. It is operated under a general agency.

Q. Under a general agency contract, is that right? A. Yes.

Q. And as to the steamship Cape Breton, in what manner does the Matson Navigation Company operate that boat? A. As sub-agents.

Q. As sub-agents under American Export Lines, is that right? A. Yes sir.

Mr. Pratt: Now the Government offers in evidence these Exhibits 84 for Identification and 85 for Identification, with the understanding received from Mr. Faulkner that there is a concession that the Exhibit 84 is an actual invoice of Nye and Nissen directed to United States of America, War Shipping [1200] Administration, and that the check, which is many times larger than the amount of the invoice, represents the payment of this invoice, among others.

The Court: Let it be admitted and marked.

Mr. Faulkner: Subject to our general objection, your Honor.

The Court: Very well.

(The documents in question were thereupon received in evidence as U. S. Exhibits 84 and 85.)

(Testimony of James G. Lee.)

Mr. Faukner: The purpose of my stipulation was to shorten the hearing, rather than lengthen it. I stipulate to it and then you go and prove it.

Mr. Pratt: I want the record to show——

Mr. Faulkner: Both.

Mr. Pratt: I am taking your stipulation.

Mr. Faulkner: But you are also taking the time to prove the event. I withdraw the stipulation from now on.

Mr. Pratt: Q. I now direct your attention to some more papers, Mr. Lee.

I am asking that there be marked for identification copy of an invoice, Nye and Nissen, to the United States War Shipping Administration, dated September 15, 1944, in the amount of $6,600.00, for delivery of 400 cases of eggs to the Hawaiian Shipper, Pier 32, Voyage 12.

(The document was thereupon marked U. S. Exhibit No. 86 for Identification.) [1201]

Mr. Pratt:

Also the invoice of Nye & Nissen to the United States dated December 5, 1944, to Hawaiian Shipper in the sum of $7,140.

(The document was marked U. S. Exhibit 87 for Identification.)

Mr. Pratt: Also, I would like to mark for identification a check, a cancelled check of Matson Navigation Company payable to Nye & Nissen, dated January 5, 1945, for $26,855.90.

(The document was marked U. S. Exhibit 88 for Identification.)

(Testimony of James G. Lee.)

Mr. Pratt: Q. Mr. Lee, did you bring checks paying both of these Hawaiian Shipper invoices for both the 12th and 13th voyages?

A. I have one check in the witness room, there.

Q. You have the other check in the witness room? A. Yes, I think so.

Q. Will you kindly go and get it, if the Court will permit?

The Court: All right.

(The witness obtained the document referred to.)

Mr. Pratt: I also ask to have marked for identification check of Matson Navigation Company as general agent to Nye & Nissen, dated October 3, 1944, for $20,130.28.

(The document was marked U. S. Exhibit 89 for Identification.)

Mr. Pratt: I direct your attention to all of these four exhibits, 86, 87, 88 and 89 for Identification, and ask you [1202] if these are papers that are part of the regular records of your company.

A. Yes, sir.

Q. Did they pass through your hands, Mr. Lee?

A. Yes.

Q. In connection with your function as disbursing cashier? A. Yes.

Q. And the invoice, Exhibit No. 86 for Identification, in the sum of $6,600, that is dated September 15, 1944, are you able to tell me whether that invoice was paid by means of this check, Exhibit 89 for identification? A. Yes, sir, it was.

(Testimony of James G. Lee.)

Q. With what funds was that invoice paid?

A. War Shipping Administration funds.

Q. Funds of the United States? A. Yes.

Q. I now call your attention to invoice, Exhibit No. 87 for Identification, and also the check, Exhibit No. 88 for Identification, and ask you whether that check paid that invoice. A. Yes, it does.

Mr. Pratt: These four exhibits, 86, 87, 88 and 89, are offered in evidence in connection with the first count of the indictment.

Mr. Faulkner: We make the general objection that has heretofore been clearly indicated to your Honor.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

The Court: They are admitted and marked.

(U. S. Exhibits 86, 87, 88 and 89 for Identification were thereupon admitted in evidence.)

Mr. Pratt: I now direct your attention to four exhibits, 76, 78, 77, and 79——

The Court: What are they?

Mr. Pratt: These are delivery——

The Court: Ask the witness what they are.

Mr. Pratt: Q. What are these, Mr. Lee, the four papers there?

A. Those are delivery receipts.

Q. Did those come to your office in connection with the payment of invoices representing those deliveries? A. No, sir.

Q. They did not come to your office?

A. No, sir.

(Testimony of James G. Lee.)

Q. Into what office of your company did they come, if you know?

A. The purchasing department.

Q. I notice on these invoices, on each of them there is the imprint of a rubber stamp, and I am referring now particularly to Exhibit 87 in evidence, there are two rubber stamps, and I will ask you whether the original of that paper when it came to your attention, whether if was signed by a representative of Nye & Nissen.

Mr. Faukner: We object to that as calling for an opinion and conclusion of the witness.

Mr. Pratt: Then we will have to put it in evidence.

(Private discussion between counsel.)

Mr. Faulkner: Oh, I think we will stipulate to those if [1204] you get them, Mr. Pratt, if you will get them all—I think some are over here. How many are there? Four altogether?

The Court: I will excuse the jurors and you may enter into any stipuation that you can agree on. I will excuse the jurors until two o'clock.

(A recess was taken until two o'clock p.m.)

Afternoon Session, February 6, 1946, 2 p.m.

The Court: Waive the roll call, stipulating and agreeing all the jurors are seated in the box?

Mr. Faukner: Yes.

The Court: You may proceed, gentlemen.

JAMES G. LEE,

recalled.

Direct Examination (Resumed.)

Mr. Pratt: If the Court please, it is stipulated, referring to Exhibit 81 in evidence, that when the original invoice, of which this is a copy, was sent to Matson Navigation Company as general agents for the War Shipping Administration it bore a rubber stamp in the terms shown on Exhibit 81.

Mr. Faulkner: That is right.

Mr. Pratt: But signed "Nye & Nissen, by Trini——"

Mr. Faulkner: "Trini," a contraction of Trinidad, your Honor.

Mr. Pratt: "R-o-b-l-e, Bookkeeper."

Mr. Faulkner: That's right. That is likewise true of——

Mr. Pratt: This relates to the steamship Cape Breton. It is also——

Mr. Faulkner: The same stipulation in respect to exhibit—What is the next one? [1205]

Mr. Pratt: Also stipulated that Exhibit 84, which is a duplicate copy of the invoice sent by Nye & Nissen to Matson Navigation Company as agent for the War Shipping Administration bore upon the rubber stamp which appears on the Exhibit 84 the signature below "Nye & Nissen by Trini Roble, Bookkeeper."

Mr. Faulkner: That is correct, your Honor. That is the S.S. Phillipa.

Mr. Pratt: As to Exhibit 87 in evidence, this is a copy, a duplicate copy of the ~~invoice~~ sent by Nye

(Testimony of James G. Lee.)

& Nissen to Matson as general agents for War Shipping Administration, relating to a delivery to the steamship Hawaiian Shipper, it is stipulated that the rubber stamps appearing on this exhibit were on the original, signed as follows: The one on the right, Nye & Nissen by Trini Roble, Bookkeeper," and the one on the left, "Nye & Nissen," which is part of the stamp, "Vendor," and under it the signature, "Trini Roble."

Mr. Faulkner: That's right, your Honor.

Mr. Pratt: Q. Mr. Lee, having reference now to the purchase order, rather to the invoice and check relating to a delivery to the steamship Cape Breton on May 10, 1944, which you have identified, you have also identified the check which paid the amount, I will ask you whether your company made a claim upon American Export Lines for reimbursement for this expenditure on behalf of the Government?

Mr. Faulkner: We object to that as incompetent, irrelevant, [1206] and immaterial, and hearsay as to the defendants.

The Court: If he knows he may answer.

Mr. Faulkner: Exception.

The Witness: Yes, we did.

Mr. Pratt: Q. Do you know when you made that claim for reimbursement—I show you these documents I have in my hand:

A. July 7, 1944.

The Court: Speak up so all the jurors will be able to hear you.

(Testimony of James G. Lee.)

Mr. Pratt: July 7, 1944. Will you mark these, please? I am offering for identification two documents that are fastened together there, they are being offered collectively as one exhibit for identification.

The Court: Admitted and marked.

(The documents were marked U. S. Exhibit 90 for Identification.)

Mr. Pratt: Q. Are these documents which are marked Exhibit 90 for Identification part of the regular records of Matson Navigation Company, kept in the ordinary course of business?

A. Yes, sir.

Q. Is this paper the claim made upon American Export Lines for reimbursement for supplies delivered to the Cape Breton? A. Yes, sir.

Q. Does that include the item of $778.01 representing the invoice, Exhibit No. 81?

A. Yes, sir. [1207]

Q. Can you state from the records of your corporation whether that claim for reimbursement was paid?

A. Only by notation on the face of this bill.

Q. Is that part of the records of your company which show that payment? A. Yes, sir.

Mr. Pratt: This exhibit, 90 for Identification, is offered in evidence, may it please the court.

Mr. Faulkner: Same objection, incompetent, irrelevant, and immaterial, hearsay as to the defendants, not binding upon them, none of the entries were ever brought home to the defendants, nor are

(Testimony of James G. Lee.)

they a party to the transaction represented by the exhibit.

The Court: Overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 90 for Identification was received in evidence.)

Mr. Pratt: Cross-examine.

Cross-Examination

Mr. Faulkner: Q. Mr. Lee, there are three series of invoices and I think that you testified that two of these invoices which were shown to you on the stationery of Nye & Nissen form part of six invoices that have been prepared by the vendor and two would ultimately get into your department; is that correct? A. Yes, sir.

Q. Mr. Lee, in respect to the particular invoices that are [1208] marked—the first one, you look at that, please, Exhibit No. 81. Now, do I understand that invoice came to the Matson Navigation Company from the firm of Nye & Nissen?

A. Yes, sir.

Q. Now, the firm of Nye & Nissen had no participation whatever in the manner in which you either paid that invoice nor the manner in which you secured any funds from any person; isn't that right? A. That is true, yes.

Q. You said that, as a matter of fact, that particular invoice became the subject matter of repayment to you from the American Export Lines, is that right? A. Yes.

(Testimony of James G. Lee.)

Q. Where is the evidence of payment in this Exhibit 90, is it that pencil mark?

A. Yes; it is that notation here.

Q. Is that in your handwriting?

A. No, that is in the receiving cashier's handwriting.

Q. Have you anything to do with the receiving cashier? A. No, sir.

Q. In other words, this is not a record of your department? A. Not mine, no.

Q. It is not kept by you in the regular course of your services to the Matson Navigation Company as a disbursing cashier? A. No, sir.

Q. The record that you speak of, indicating that this invoice, if that is what you would call it, was paid in September, is that right?

A. That is correct.

Q. Up until the September date, the fact is, is it not, Mr. Lee, [1209] that the goods represented by those invoices were sold to the Matson Navigation Company and paid for by them, isn't that correct? A. That is correct.

Q. Then later, by reason of certain relations that your company had with others, you billed others for payment and included a charge of $778 for——

A. That is correct.

Q. For reimbursement to you of moneys that you had spent, is that right?

A. That is correct.

Q. That money was not paid to you by the United States Government, was it?

(Testimony of James G. Lee.)

A. No, sir.

Q. It is paid by the American Export Lines?

A. Yes, sir.

Q. In connection with these other transactions, Mr. Lee, for instance, the S.S. Phillipa, Exhibit 84, it is a fact, is it not, that the check that was issued there was not sent to Nye & Nissen, but was sent to the Bank of America; is that correct?

A. That is correct, but for the account of Nye & Nissen.

Q. In other words, the check never went out to Nye & Nissen, but went to the Bank of America for their account? A. That's right.

Q. These two checks, U. S. Exhibits 88 and 89, I think you said, Mr. Lee, that this check for $20,000 represented the payment of one of these invoices; can you look at either of those checks and from the checks alone tell whether either of the invoices that you have been identifying here were paid by those checks? A. Not from the checks. [1210]

Mr. Pratt: I object to that. I understood that there was a concession on the part of Mr. Faukner that these checks that he is talking about did in fact pay those particular invoices with others.

Mr. Faulkner: That's right, your Honor, but I want to get this record accurate. In other words, the witness—you see, Mr. Pratt takes my stipulations and then he goes and asks the witness to prove the items. I am merely examining the witness to get the exact situation in respect to the witness' testimony.

(Testimony of James G. Lee.)

Mr. Pratt: I will say this, the witness brought other documents.

Mr. Faulkner: That is what I am going to get. I am going to get those from the witness.

Mr. Pratt: Very well. We will be glad to have you present them.

Mr. Faulkner: You have not brought them out yet.

Q. In other words, your testimony that those particular checks were issued to Nye & Nissen in payment of particular vouchers is not based upon an examination of the vouchers and an examination of that check, it is?

A. The voucher would show it.

Q. By that I mean, Mr. Lee, for instance, you have a voucher there for $7140 and you have a check there for twenty thousand odd dollars, isn't that correct?

A. That is right.

Q. Now, you testified that one check paid that voucher, I mean [1211] paid that invoice. That is right, is it not? A. That's right.

Q. You have a record, have you not, of all of the items that that check is supposed to represent payment of? A. Yes.

Q. Did you bring those into court?

A. Mr. Pratt has them.

Mr. Faulkner: May I ask you to furnish those checks, Mr. Pratt?

Mr. Pratt: Here is one. Here is the one that went

(Testimony of James G. Lee.)

into that $20,000 check. Here is one for that $26,000 check.

Mr. Faulkner: Q. How many checks are there, Mr. Lee?

A. There are four here.

Q. Have you a check there, Mr. Lee, for $5224.62?

A. Yes, sir.

Q. I show you a series of papers and ask you if this is a memorandum relating to the breakdown of that check. A. Yes, sir, it is.

Q. You produced that, did you, Mr. Lee?

A. Yes, sir.

Mr. Faulkner: May that be marked Defendants' next exhibit in order for identification?

(The document was marked Defendants' Exhibit R for Identification.)

Mr. Faulkner: Q. Have you a check there for $12,196.84? A. Yes, sir.

Q. You produced that and delivered it to the Government, did you, or the agent or lawyers of the Government? A. Yes, sir.

Mr. Faulkner: I ask that be marked Defendants' Exhibit next in order for identification. [1212]

(The document was marked Defendants' Exhibit S for Identification.)

Mr. Faulkner: Q. Have you a check there for $20,130.28? A. Yes.

Q. You produced that and delivered it to the Government agents or lawyers? A. Yes, sir.

Mr. Faulkner: I ask that that be marked as

(Testimony of James G. Lee.)

Defendants' Exhibit next in order for identification.

(The document was marked Defendants' Exhibit T for Identification.)

Mr. Faulkner: Q. Have you a check there for $26,855.90? A. Yes, sir.

Q. You have a check for that amount?

A. Yes, sir.

Q. Is this series of papers that I hold in my hand the series of documents which you presented to the Government Agents or lawyers from the files of the Matson Navigation Company? A. Yes, sir.

Mr. Faulkner: I ask that be marked Defendants' Exhibit next in order for identification.

(The document was marked Defendants' Exhibit U for Identification.)

Mr. Faulkner: That is all.

Mr. Pratt: Have you offered them in evidence?

Mr. Faulkner: No, I did not.

Mr. Pratt: That is all, Mr. Lee. [1213]

CHARLES RANSON,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Charles Ranson.

The Court: You will have to raise your voice so the reporter can hear when you are answering questions. The reporter must take it down. Please help him.

The Witness: Yes.

Direct Examination

Mr. Houck: Q. Mr. Ranson, have you been employed by Nye & Nissen? A. Yes.

Q. About what period was this?

A. Well, it was late in 1943, late in the year 1943, until a little after the middle of May, 1944.

Q. As an employee of Nye & Nissen what duties were assigned to you?

A. Well, I worked inside in the plant, I worked in the refrigerators stacking eggs, helping out on the trucks, unloaded cars; occasionally I drove a small Dodge truck on special deliveries for them.

Q. How often did you make deliveries?

A. Well, that is hard to state. It was just—it just seemed as though whenever the occasion would arise, it would be a special delivery, or something like that, that there was a rush delivery, I would have to take it if there was nobody else available.

Q. You were not the regular driver, then, is that right? [1214] A. No, sir.

Q. What type of truck did you use when you made these deliveries.

(Testimony of Charles Ranson.)

A. It was a small Dodge truck.

Q. Do you recall making a delivery to the Matson Navigation Company in the spring or summer of 1944? A. Yes.

Q. About when was that delivery made?

A. That was about a week or ten days before I left. I believe I left on the 17th of May.

Mr. Faulkner: The 17th of what?

The Court: 17th of May.

Mr. Houck: Q. 1944? A. 1944.

Q. Do you recall the pier that you made this delivery at? A. It was Pier 30.

Q. What products did you deliver?

A. I delivered eggs and some butter and cheese.

Q. Do you recall how many eggs you delivered?

A. It was around 45 cases.

Q. Who told you to make this particular delivery? A. Mr. Goddard.

Q. Did he designate the eggs which you were to take on this trip?

A. Well, he brought over a flat of eggs. The eggs were stacked on the flat. He brought over a flat of eggs to the truck and told me to start loading those.

Q. Where was the truck at the time?

A. It was backed up at the loading platform.

Q. So he brought these eggs to the loading platform? A. Yes. [1215]

Q. What did you do?

A. I started to load the eggs.

Q. Did he give you any further instructions

(Testimony of Charles Ranson.)

about the eggs which you were to take on this occasion?

A. He brought over about ten cases of eggs with a hand truck, it was two dumps that he brought over.

Q. This is a different lot of eggs?

A. This is a different lot of eggs.

Q. What did he tell you to do?

A. He told me to take these eggs and mix them in once in a while with the other eggs off the flat?

Q. What did you do?

A. Well, I put on a few more eggs off the flat then I took one of these cases, and I started mixing them in the tiers, as I went on.

Q. In loading these eggs from the flat, did you observe any markings on the cases?

A. Well, I noticed it was the Department of Agriculture stamp on them.

Q. Which eggs were they this stamp was on, the eggs on the flat; or the ten cases that came over later?

A. The cases on the flat.

Q. Do you recall the grade indicated on this Department of Agriculture stamp?

A. None other than AA.

Q. A AA grade? A. Yes.

Q. These ten cases that you were instructed to load on, did you observe any markings on those cases?

A. Well, the only marking I noticed on them was a large purple "P" stamped on the end. [1216]

(Testimony of Charles Ranson.)

Q. Did you observe any Government inspection stamp on these cases?

A. I don't recall that I did. [1216-a]

Q. Did you have any conversations with anyone relating to these ten cases of eggs that you put on this load?

A. Well, when I started to load these eggs I noticed that they were lighter than the other eggs and I make the remark to Mr. Goddard that the cases seemed light. I didn't feel like taking the load. I didn't feel like delivering the load.

Q. Did he make any response?

A. None other than he said, "It is all right. Go ahead and load those."

Q. Was anyone present besides you and Mr. Goddard at this conversation?

A. Not that I recall.

Q. Where did it take place?

A. It took place right at the loading platform in front of the plant.

Q. What company plant was this at?

A. It was the plant on 17th Street.

Q. What did you do? Did you load this truck all yourself?

A. Yes sir.

Q. What did you do once you had it loaded?

A. After I had the truck loaded, why, I got the papers from Mr. Goddard.

Q. What papers are you talking about?

A. Well, I got the two copies of the [illegible]

(Testimony of Charles Ranson.)

sheets and several copies of the invoices. I do not recall how many.

Q. Let me show you Government's Exhibit 76 in evidence. Do you recognize the form upon which that exhibit appears?

A. Yes, I do. It is the delivery form that we use to deliver orders.

Q. I call your attention to the lower righthand corner, to a [1217] signature that appears there. By the way, is there any handwriting on there that you can identify?

A. Well, only Mr. Goddard's.

Q. What of this exhibit is Mr. Goddard's handwriting?

A. The entire form made out outside of this one signature down here, which is the receiver of the goods at the dock, the checker.

Q. How many of this type of form, or the form Government's Exhibit 76 in evidence, did you take along with this load? A. Two.

Q. What did you do with them?

A. Well, I had them signed and one of them went back to the plant.

Q. Who did you have them signed by?

A. The checkers that received the goods.

Q. What did you do with both of them then?

A. He received one and the other was returned to the plant as evidence that I had delivered the goods and it was all there.

Q. Who did you give it to when you got back to the plant?

(Testimony of Charles Ranson.)

A. Well I don't recall when I got back there. Mr. Goddard was in the office at the time, but usually if we got back and no one was in the office to give them to, we took them in, put them on Mr. Goddard's desk, and put a paper weight on them so they would not be mislaid or lost.

Q. Now I show you Government's Exhibit 81 in evidence and ask you if you recognize the form on which that exhibit appears?

A. Well, that is a copy of the invoice that accompanied the [1218] other form.

Q. It is a form similar to that which you took on that occasion? A. Yes.

Q. How many copies of that did you take?

A. I don't recall just exactly how many. There were several copies.

Q. What did you do with them?

A. Whoever received them down at the dock, they took those papers.

Q. You said you took some eggs and butter. Who instructed you to take those?

A. Well, Mr. Goddard.

Q. What did he tell you?

Mr. Faulkner: This is all under Count 1 isn't it?

Mr. Houck: Yes, under Count 1.

Mr. Faulkner: We make the same objection, your Honor.

The Court: The objection will be overruled. You may answer.

Mr. Faulkner: Exception.

(Testimony of Charles Ranson.)

A. Well, I don't recall his exact words. As near as I can remember, that he had an order that had to get down to the Matson dock, and at the time I was working in the back of the plant. I don't recall exactly what I was doing at the time, but he said he had an order that had to get down to the Matson dock and wanted me to come down and deliver it.

Q. Did you find the butter and cheese that was to go yourself or how did you get hold of it?

A. No, they were brought over to me. [1219]

Q. Who brought them over to you, do you recall?

A. I don't recall. I don't recall whether it was Mr. Goddard or Mr. Berman. One of the two of them brought them over.

Q. I will show you Government's Exhibit 46 for Identification and ask you if the Department of Agriculture stamp which you testified you saw on these cases of eggs appears similar to the stamp on this exhibit? A. Yes, sir.

Q. And then I show you Government's Exhibit 43 for Identification and ask you if the stamp "P" which you testified appeared on these ten cases of eggs is similar to the "P" which appears on that exhibit? A. Yes sir.

Mr. Houck: That is all from this witness on direct.

Cross Examination

Mr. Faulkner: Q. Mr. Ranson, did I understand you to say that you were employed by the

(Testimony of Charles Ranson.)

firm of Nye and Nissen for a period of about a year?

Mr. Faulkner: We would like to reserve the right when we discuss other motions to move to strike all the testimony of this witness, your Honor.

The Court: It went in over your objection, did it not?

Mr. Faulkner: Yes.

The Court: Isn't that sufficient for all purposes?

Mr. Faulkner: We won't know until we hear all of it whether this evidence will ever be connected up.

The Court: Your motion is available at any time, is it [1220] not?

Mr. Faulkner: Yes, your Honor.

Q. Mr. Ranson, how long did you say you worked for the firm of Nye and Nissen?

A. I worked there in the latter part—I think I first went to work for them in October 1943 and I left in May of 1944.

Q. October of 1940? A. Three.

The Court: And left in 1944.

Mr. Faulkner: Q. Until May 17, I think you said, 1944? A. 1944.

Q. During that period of time, Mr. Ranson, you had occasion to drive a truck on numerous occasions? A. Yes sir.

Q. And you delivered merchandise on numerous occasions. Did you deliver merchandise on Pier 30 on other occasions? A. Yes.

Q. How many times would you say you drove a truck with merchandise on it during that period

(Testimony of Charles Ranson)

from October to May 1944 for the firm of Nye and Nisson?

A. Well, that would be pretty hard to say, because I not only made pier deliveries, I had several stores in town they would send me to, and sometimes they would send me to Oakland.

Q. Do you remember the merchandise you delivered on the 16th of May, 1944?

A. On the 16th?

Q. Yes. May 16, the day before you left?

A. (The witness shook his head.)

Q. Do you remember the merchandise you delivered on the 25th [1221] of June 1944?

The Court: You will have to answer for the purpose of the record. A. No sir.

Mr. Faulkner: Q. Do you remember any particular lot of merchandise that you delivered on or about the 25th of June 1944?

Mr. Pratt: I object to that. He said he left on the 17th of May.

Mr. Faulkner: Q. The 25th of April 1944?

A. No, I don't recall those deliveries now, no sir.

Q. Do you remember any merchandise that you delivered to anyone in the month of March 1944?

A. Well, I can recall several deliveries that I made, as far as that goes, but I don't recall the dates.

Q. Tell me a delivery that you remember making, Mr. Ranson, in the month of March, February or January—the first three months of 1944? Tell me some delivery that you remember.

(Testimony of Charles Ransom.)

A. Well, I made deliveries over at the Andrew Williams store in San Francisco—I mean in Oakland.

Q. To whom?

A. Andrew Williams store in Oakland.

Q. What quantity of merchandise did you deliver to the Andrew Williams store on any particular occasion? A. No sir.

Q. How many cases?

A. I don't recall that.

Q. Tell me of any occasion that you remember delivering any [1222] merchandise to any pier on the waterfront in the year 1944 that you remember other than this one?

A. Well, I remember delivering around 50 cases of eggs and some butter and cheese to Pier 44.

Q. When? A. I believe that was in May.

Q. Were the eggs stamped by the Department of Agriculture? A. Yes sir.

Q. Did you examine each case?

A. Not each case, no sir.

Q. Pardon me? A. No sir.

Q. You did not? A. No.

Q. You did not examine each one of these cases either, did you?

A. I didn't examine every case because the eggs on the flats were stacked in such a way that when you went to unload them the ends of the cases were towards you, and that was the only way the inspector could stamp them, and you could see the stamp as you were loading them. But the eggs that

(Testimony of Charles Ranson.)

were hand trucked to me were hand trucked sideways and you had to turn the case in order to see the stamp.

Q. Did you see the stamp, Mr. Ranson, on each of the 45 cases on May 10?

A. Not each of them, no.

Q. Did you see a Department of Agriculture stamp on any of the 45 cases? A. Yes.

Q. What was the date on the stamp, Mr. Ranson?

A. I never read the date on the stamp.

Q. You were in that plant for six or eight months, were you not? [1223].

A. Yes sir.

Q. And it is a fact, is it not, that cases of eggs —the cases themselves—uniformly bore from one to two to three governmental agency inspection stamps on them, isn't that correct?

A. So far as I know, yes.

Q. All that you remember now is that you recollect that there was on those cases that you looked at a Department of Agriculture stamp, isn't that right? A. Yes sir.

Q. Do you happen to remember what type of eggs these were that you were delivering down at Pier 30 on or about the 10th of May?

A. No sir, other than that they were stamped AA.

Q. In other words, that was the quality?

A. Yes.

(Testimony of Charles Ranson.)

Q. That has nothing to do with the weight of the eggs, has it, Mr. Ranson?

A. Not the quality, no, not the AA stamp, no sir.

Q. What? A. No sir.

Q. Did I understand that you picked up a case of eggs and that you had a conversation that they were light?

A. They felt lighter than the other eggs, yes sir.

Q. Than the other cases. Now, how much lighter, Mr. Ranson?

A. Well, I couldn't tell you in exact poundage, but there was enough difference that you could tell by the feel of them.

Q. Your business is a lumper, is it not?

A. Yes sir.

Q. You belong to the lumpers' union, is that right?

A. Teamsters' union. [1224]

Q. Don't they refer to the particular work that you were doing as a lumper? A. Yes sir.

Q. What did the case of eggs that you felt were heavy weigh?

A. Well, I never had occasion to weigh a case. I wouldn't know.

Q. What did the case of eggs that you say you felt weighed light, what did they weigh?

A. Their exact weight I wouldn't know either.

Q. You divided this load into a quantity that were on flats. How many flats were involved in the loading of your truck?

(Testimony of Charles Ranson.)

A. Well, there was a little over one flat.

Q. And how many cases of eggs—was there about a flat and a half on the flats? Would that be about right?

A. Well, I don't recall exactly how many they used to stack on a flat now. On several occasions if they had a broken flat they used to bring those over to me.

Q. I am talking about the particular flats that you remembered so distinctly on your direct examination. How many cases of eggs were on each of those flats? A. I don't remember.

Q. You do not know? A. No.

Q. When did you first talk to any Government agent about having delivered any eggs to Pier 30?

A. Well, it was about three days after I quit the job.

Q. On the 20th of May, 1944, is that right?

A. Yes, sir.

Q. How many times you your talked to them since that, Mr. Ranson, [1225] Government agents?

A. Well, outside of here in the hall, when I was waiting to be called for court, twice.

Q. Pardon me?

A. Twice, outside of the little conversation we had in the hall while I was waiting to be called.

Q. Have you talked to them between May 20, 1944, and when this case started for trial?

A. On two occasions, yes sir.

Q. So you talked to Government agents on the

20th of May, you talked to them while you were out here in this building before you went to court, and you talked to them on two other occasions, is that correct? A. Yes sir.

Q. In the course of that you were shown, were you not, a counterpart of this Exhibit 81 which you saw a moment ago? A. Yes, sir.

Q. You were, were you not? Was it explained to you that there were 45 cases of eggs involved?

A. No sir.

Q. It was not? Did anyone tell you that a claim was made that some of these eggs were small?

A. No sir.

Q. You never heard that before, is that right? Do you know what size of eggs were in those boxes that you were handling? A. No, I do not.

Q. Do you know what size eggs were generally, or that you were handling when you delivered eggs for Nye and Nissen?

A. Well, it depends on who they delivered to. The majority of the eggs that were delivered down to the docks were ship stores, which I believe these eggs were for, were usually a medium size egg. [1226]

Q. That is your best recollection?

A. That is my best recollection.

Q. Will you tell me the name of some delivery that you distinctly remember of other than this where you delivered Medium sized eggs on the dock? Tell me some other instance where you ever de-

(Testimony of Charles Ranson.)

livered Medium sized eggs on the dock for Nye and Nissen?

A. Well, I delivered to several docks. I delivered to Naval Supply Depot in Oakland.

Q. No, give me the name of any depot that you delivered Medium sized eggs on other than Pier 30 on the 10th of May. Just give me the name of some dock?

A. Well, I delivered to the Naval Supply Depot in Oakland.

Q. All right, the Naval Supply Depot in Oakland. When?

A. I can't recall the date.

Q. Well, the month? A. I wouldn't know.

Q. The year? A. 1944.

Q. Now, is the Naval Supply Depot over in Oakland the only dock that you have any recollection of in which you delivered Medium sized eggs to a dock?

A. No, I recall delivering to the Army base and to several piers here in San Francisco, but as far as the dates are concerned I can't remember the exact dates.

Q. I mean a dock, not the Army, but a dock?

A. Well, I delivered eggs, several cases, at Pier 32, Pier 44.

Q. Can you give me any instance where you delivered eggs to [1227] Pier 44 that you know were Medium sized eggs?

A. Well, as far as I know they were Medium sized eggs, the way I understood it. That was what

(Testimony of Charles Ranson.)

the Government bought, practically all the Government bought, for ships stores, Medium size.

Q. In other words, your testimony relating to the delivery of Medium sized eggs is not based on your recollection of the size of the eggs, but the assumption that you thought the Government bought Medium sized eggs, is that correct?

A. Yes sir.

Q. Other than that you do not know what size eggs were involved on the shipment of May 10, do you? A. No sir.

Q. And you do not know what sized eggs were involved when you took them to the Naval Supply Depot in Oakland? A. No sir.

Q. Nor to Pier 44? A. No sir.

Q. Nor any of the other transactions that you say you delivered Medium sized eggs, isn't that right? A. No sir.

Q. So all your testimony about the size of these eggs is based upon an assumption that the Government was buying a Medium sized egg, am I correct in that? A. Yes sir.

Q. Who told you that the Government was buying Medium sized eggs?

A. Well, I don't recall as anyone ever told me, but that seemed to be the general conversation around the plant, buying Medium sized eggs.

Q. Mr. Ranson, when you got down to the dock on the 10th of May 1944, you received from somebody on that dock a receipt, did you not, similar

(Testimony of Charles Ranson.)

to the one here in evidence which you have [1228] already identified, No. 76?

A. Yes sir, I had two of these receipts, a duplicate.

Q. You left one with the man on the dock, didn't you? A. Yes sir.

Q. And you took one back to Nye and Nissen. The man on the dock checked that merchandise off your truck, did he not? A. Yes sir.

Q. Item by item, isn't that correct?

A. They were always supposed to count the number of packages. As far as quality or anything else, why, I don't know anything about that, but they made sure that you delivered the right amount of packages, what that receipt called for.

Q. You had been down on that dock before, hadn't you? A. Yes sir.

Q. The man on the dock checks the items, doesn't he? A. Yes sir.

Q. And at the time that the man was checking those items he was checking it against an invoice that accompanied them that you handled him, isn't that correct? You handed him one of these invoices?

A. Yes sir.

Q. And he checked those items against the invoice, am I correct in that? A. Yes sir.

Q. And after he was through with his checking he kept a counterpart and gave you a counterpart?

A. Yes sir.

Q. On this particular occasion how many cases of cheese did you [1229] take down to the dock?

(Testimony of Charles Ranson.)

A. I don't remember.

Q. How many cases of butter did you take down to the dock?

A. I don't remember that.

Q. How many kinds of cheese did you take down to the dock?

A. Well, I if remember right, there was some loaf cheese and there was some grated cheese.

Q. Is that all? Is that all?

A. That is all that I can recall, yes sir.

Q. You have seen this delivery tag in the last few days, have you not, in preparation for coming on the witness stand?

A. Well, I wouldn't know how long ago it was, but I have seen it, yes sir.

Q. And you were told that you would be requested to identify this delivery tag, were you not?

A. Yes sir.

Q. And to identify the signature of the man who received it, isn't that correct?

A. Well, not the signature, no sir, because I couldn't do that.

Q. How closely do you think, Mr. Ranson, that you from your ability as a handler of merchandise, within how many pounds do you think you could guess or determine the weight of an article by lifting it in the regular course of your work?

A. Well, hard telling.

Q. For instance, if an item was supposed to weigh 50 pounds, do you think you could pick up

(Testimony of Charles Ranson.)

an article weighing 53 pounds and know that it weighed too much?

A. No, I don't think I could. [1230]

Q. If an article was supposed to weigh 50 pounds, do you think you could pick up an article weighing 47 pounds and know that it weighed too light?

A. Not within three pounds, no sir.

Q. Do you think you could do it within five pounds?

A. I may be able to. I don't know.

Q. You aren't sure though?

A. I'm not sure.

Q. Mr. Ranson, you testified that you saw a letter "P" on some eggs, is that correct?

A. That is right.

Q. How do you remember that so distinctly, Mr. Ranson, that on a particular day in May, 1944, you remember that there was a case of eggs that had the letter "P" on it?

A. Well, I remember it because the other eggs didn't have that marking on. It was the only occasion at the time I worked there and loaded eggs I ever had an occasion to have to mix eggs like that into a load.

Q. Mr. Ranson, is it not a fact that in the months of May, April—put it this way: October, November, December, January, February, March, April and May, the months that you worked in Nye and Nissen, you have literally seen thousands of cases of eggs that had a printed "P" on them?

A. I have, yes.